

Text of Articles

Article 1

In the Criminal Procedure Act (Official Gazette of the RS, Nos 32/07 – official consolidated text, 102/07 – ZSKZDČEU, 23/08 - ZBPP-B and 68/08), paragraph (1) of Article 137 is amended as follows:

‘(1) If prosecution of a criminal offence against the safety of public transport is in progress, the court may, upon a reasoned request of a competent prosecutor, order for the driving licence of the accused to be confiscated during the course of the proceedings. Prior to instituting proceedings for a criminal offence against the safety of public transport, the police which performs inspection may confiscate the driving permit of the person reasonably suspected of having committed such a criminal offence and issue a receipt thereof and the driving permit is sent to the state prosecutor together with the crime report within three days. The state prosecutor shall, within eight days after the receipt, return the driving permit to the person from whom it was taken or send him to the court and motion for the criminal proceedings to be instituted and for temporary confiscation of the driving permit.’

The following new paragraph (2) is inserted:

‘(2) The court shall decide by a ruling on the motion referred to in the preceding paragraph. An appeal against the confiscation of the driving permit, which shall not stay the execution of the ruling, may be lodged by the accused within three days of the receipt of the ruling. The court rendering the ruling shall decide on the objection on the basis of the submitted material or it may conduct a special hearing with the parties before making a decision.’

The present paragraph (2) which now becomes paragraph (4) is amended as follows:

‘(4) Before the end of criminal proceedings the court may, upon a motion or *ex officio*, return temporarily confiscated driving licence to the accused if it finds the conditions for the confiscation no longer exist.’

Paragraph (3) is amended as follows:

‘(3) The parties shall have a right to an appeal against the ruling of what was decided on the objection. The appeal of the accused against the ruling rejecting the objection shall not stay the execution of the order on the confiscation of the driving licence.’

The following new paragraph (3) is inserted:

‘The provisions of the law regulating penal sentencing on the disqualification from driving a motor vehicle shall by analogy apply to the execution of measures under this Article.’

The present paragraph (4) now becomes paragraph (6).

Article 2

In Article 144, the semicolon in the tenth indent is replaced by a full stop and the following new sentence is inserted: ‘The provision on common-law marriages under this Act shall also apply to registered same-sex civil partnerships under the law regulating the registration of same-sex civil partnership.’

Article 3

In Article 160.a, paragraph (1) is amended as follows:

‘(1) The public prosecutor may, in exercising his authority under this Act, set guidelines for police work, the work of a joint research group (Article 160.b) and the work of other competent national authorities and institutions working in the area of taxes, customs, financial operations, securities, protection of competition, prevention of money laundering, prevention of corruption, prevention of illicit drugs and inspection concerning mandatory instructions, expert opinions and proposals for collecting information and the implementation of measures within their competence for the purpose of detecting a criminal offence and the perpetrator, or to collect information necessary for their decision concerning a criminal prosecution. If the principal of an authority or institution mentioned in the preceding paragraph is of the opinion that an obligatory instruction of the state prosecutor falls within the original jurisdiction of the authority or institution it may reject the instruction by a written explanation.’

The following new articles (2), (3) and (4) are inserted:

‘(2) In cases of complex criminal offences, especially in the area of the economy, corruption and organised crime that are the subject of a preliminary procedure and demand longer and directed operations of a number of

authorities and institutions referred to in the preceding paragraph, the head of the competent State Prosecutor's Office may, *ex officio* or upon a written initiative of the police, establish a specialised investigation team together with the heads of individual authorities or institutions referred to in the preceding paragraph.

(3) The specialised investigation team shall be managed and directed by the competent state prosecutor and the members shall be appointed by the heads of the authorities and institutions referred to in the preceding paragraph.

(4) On establishing a specialised investigation team, its composition, tasks and method of operation shall be determined by the head of the competent State Prosecutor's Office by a written order after prior consent of the heads of the authorities and institutions referred to in paragraph (2). The operative manager and their tasks of operational management shall be laid down in the order. A copy of the order of the competent State Prosecutor's Office shall be immediately sent to the State Prosecutor General.'

In the present paragraph (2) which now becomes paragraph (5) the words 'preceding paragraph' are replaced by the words 'paragraph (1) of this Article'.

Article 4

In Article 199.a, the following new third sentence is inserted at the end of paragraph (5): The police shall enter personal and other information of the accused in appropriate records in accordance with the law regulating the police.'

The following new paragraph (6) is inserted:

'(6) If the police apprehend the accused outside the place stipulated in the ruling without having the permission mentioned in paragraph (3), they shall arrest the accused and immediately bring the accused to the investigating judge. The police shall notify the state prosecutor of the arrest. On bringing the person to the investigating judge, the police shall inform the judge why and when the accused was arrested. The investigating judge shall immediately interrogate the accused, no later than within 24 hours from the time the person was brought to the judge, concerning the circumstances of the breach of the ruling and decide whether to order detention of the accused in accordance with paragraph (4). The state prosecutor and the defence counsel may be present during the interrogation. When the Charge Sheet has already been lodged, the investigating judge shall, after interrogating the accused, send the case to the senate of the district court (Article 25(6)) or to the single judge of the local court who shall decide no later than within 48 hours whether the detention against the accused is to be ordered in accordance with paragraph (4). Until the decision is made, the investigating judge shall order detention in accordance with the provisions of Article 203(4) and (5) of this Act. When the detention was ordered against an accused who does not have a defence counsel, such counsel shall be assigned *ex officio*. A ruling on assigning a defence counsel shall be served on the defence counsel together with the order of detention.'

The present paragraphs (6) and (7) now become paragraphs (7) and (8).

Article 5

The following Article 219.a is inserted after Article 219:

'Article 219.a

(1) A search of electronic and associated devices, and electronic data storage device (electronic device) such as a telephone, facsimile, computer, disk, optical reader or memory card, may be conducted for the purpose of obtaining information in an electronic format when there are grounds for a suspicion a criminal offence was committed and it is likely that the electronic device contains electronic information:

- on the basis of which it would be possible to identify the suspect or accused, detect or apprehend traces of the criminal offence that are important for criminal proceedings; or
- which may be used as evidence in criminal proceedings.

(2) The search shall be performed on the basis of a prior written consent of the holder and of users of the electronic device known and reachable by the police who legitimately expect their privacy (user) concerning the device, or on the basis of a substantiated written ruling of the court issued upon a motion of the state prosecutor. When the investigation is performed on the basis of an order of a court, the copy of the order shall be served on the holder or user of the electronic device which is being searched before commencing with the search.

(3) The motion and the order for the search of the electronic device shall contain:

- information allowing the identification of the electronic device to be searched;

- a substantiation of the reasons for the search;
- a stipulation of the content of the information sought;
- other important circumstances that require the use of this investigative action and shall provide the method of its implementation.

(4) When the search of an electronic device is ordered in an order for house or personal search, the conditions and procedures laid down in this Article shall apply to this part of the order and the implementation thereof. In such a case, the motion for the house or personal search shall be given by the state prosecutor.

(5) By way of exception, when a written order may not be obtained in time and there is a direct and serious danger to the safety of people or property, an investigating judge may order a search of the electronic device by an oral order upon an oral motion of the state prosecutor. The investigating judge shall make an official note on the motion and the order. The written order shall be issued no later than within 12 hours after the oral order was issued or else the police that executed the order shall destroy or erase stored or copied information and inform thereof the investigating judge, the state prosecutor and the holder or user of the electronic device when known within eight days.

(6) The holder or user of the electronic device shall enable access to the device, submit cipher keys or codes and an explanation on the use of device when required to achieve the purpose of the search. If they decline to act accordingly, they may be penalised or arrested pursuant to Article 220(2) of this Act, except when they are a suspect, an accused, a person who cannot be interrogated as a witness (Article 235) or they decline to testify in accordance with this Act (Article 236).

(7) The search shall be performed while protecting the integrity of the original data and the possibility of its use in further proceedings. The search has to be conducted by interfering as little as possible with rights of persons who are not suspects or accused and by protecting the secrecy or confidentiality of the information and without causing disproportionate damage.

(8) The search shall be performed by a professional, qualified person. A record of the search shall be prepared containing, among others, the following information:

- identification of the electronic device examined;
- date and hours of starting and completing the search, to be provided separately for more than one search when the search was not performed at one time;
- possible participating or present persons during the search;
- number of the order and the issuing court;
- method of conducting the search;
- findings of the search and other important circumstances.

(9) If during the search information is found that does not relate to the criminal offence for which the search was ordered and points to another criminal offence liable to public prosecution then such information may also be confiscated. This shall be stated in the record and immediately communicated to the state prosecutor for the initiation of a criminal prosecution. Such information shall be immediately destroyed if the state prosecutor finds there are neither grounds for criminal prosecution nor any other statutory ground for the information to be taken. A record shall be made of the destruction.

(10) When not provided otherwise by this Article, for issuing and executing an order on the search of an electronic device, the provisions of Article 215(3) and (4) and Article 216(4), (5) and (7) shall apply by way of analogy.

(11) When a search of an electronic device was conducted without a court order or contrary thereto, or without a written permission referred to in paragraph (2), the court may not rest its decision on the record of the search and the information obtained therefrom.'

Article 6

The following Article 223.a is inserted after Article 223:

‘Article 223.a

(1) When an electronic device is confiscated (Article 219.a) for performing a search, the information in an electronic format shall be protected by storing it on another appropriate data storage device whereby the identity and integrity of the information and the possibility for its use in further proceedings is retained; or an identical copy of the whole data storage device shall be made whereby the integrity of the copy of all the information is protected.

If this is not possible, the electronic device shall be sealed or, when possible, only the part of the electronic device containing the information searched.

(2) When the electronic device was confiscated without a court order and its copy was made for securing the information but the court did not issue the order for search under Article 219.a(5) within 12 hours or give a permission under Article 219.a(2), the police shall permanently destroy the copy and inform thereof the investigating judge, the state prosecutor and the holder or user of the electronic device when known within eight days.

(3) The holder, user, operator or administrator of the electronic device, or the person having access to it shall upon a request of the authority that has confiscated the device take necessary steps within their powers to prevent the destruction, alteration or concealment of the information. If they declining to act accordingly, they may be penalised or arrested pursuant to Article 220(2), except when they are a suspect, an accused, a person who cannot be interrogated as a witness (Article 235) or they decline to testify in accordance with this Act (Article 236).

(4) The holder of the device, his representative or lawyer, or an expert when the information is secured pursuant to paragraph (1) is invited to be present. If they do not respond to the invitation, are absent or not known, the information is secured and an identical copy prepared in their absence. The information is secured by an adequately qualified person.

(5) When securing the information, control values are entered in the record, or subsequent checks on the identity and integrity of the secured information is provided in the record by some other appropriate method. A copy of the record is given to the person referred to in the preceding paragraph when they were present while the information is being secured.

(6) The confiscation and securing of the information shall be performed by interfering as little as possible with the rights of persons who are not suspects or accused and by protecting the secrecy and confidentiality of the information, and without causing disproportionate damage due to an inability to use the electronic device.

(7) Copies of the information confiscated shall be stored while required for the proceedings. The electronic device shall be kept until the information is stored by a method that ensures the identity and integrity of the confiscated information but not exceeding three months from the day it was obtained. When making a copy of the information is not possible, the electronic device or part thereof containing the information sought, shall be stored while this is required for the proceedings but not exceeding six months from the day it was obtained, except when the confiscated electronic device was used for committing a criminal offence or is evidence in the criminal proceedings.

(8) Copies of the information obtained in accordance with the provisions of this Article which does not relate to a criminal prosecution and concerning which there is no other statutory ground for keeping it (Article 498) shall be excluded from the file when possible and destroyed, concerning which the investigating judge, the state prosecutor and the holder or user of the electronic device shall be informed thereof within eight days.'

Article 7

In article 227, in paragraph (2), the words 'or to have a counsel appointed for them *ex officio* under conditions defined by this Act' are deleted.

Article 8

In Article 265, paragraphs (1), (2) and (3) are amended as follows:

'(1) A psychiatric examination of the accused may be ordered when there is:

- a suspicion that the accused lacked the mental capacity due to mental illness or mental retardation when the criminal offence was committed, or their mental capacity was diminished due to some other state, or other lasting and severe mental disorder; or
- a serious doubt they cannot participate in criminal proceedings due to a mental disorder.

(2) If a psychiatric expert is of the opinion that a longer examination is necessary, the accused shall be sent to an appropriate medical institution for observation. The ruling thereon shall be issued by a court upon a motion of a prosecutor after interrogating the defence counsel and the accused when their medical condition so permits. The observation shall last up to a maximum of one month. In situations referred to in the first indent of the preceding paragraph, the observation may upon a reasoned motion of the state prosecutor, prior opinion of an expert of psychiatry and prior interrogation of the defence counsel, be extended up to a maximum of one month. An appeal against the ruling extending the measure shall not stay its execution.

(3) If the expert of psychiatry finds the accused is suffering from a mental disturbance, mental retardation or some other state, or other lasting and severe mental disorder, it shall determine its nature, type, degree and duration, and give their opinion as to how such mental condition affected (Article 29 of the Criminal Code) and still affects the perception and behaviour of the accused, or whether it concerns a mental disorder preventing the accused from participating in criminal proceedings and what is the anticipated period of their procedural incapacity.'

In paragraph (4) the words 'investigating judge' are replaced by the word 'court'.

In paragraph (5) the words 'upon issuing' are replaced by the words 'before issuing'.

Article 9

In Article 359 paragraph (3) is deleted.

The present paragraph (4) now becomes paragraph (3).

Article 10

In Article 421, the first sentence of paragraph (3) is amended as follows:

'The accused, defence counsel and persons referred to in Article 367(2) may file a requests for the protection of legality within three months or, in the case of the decision referred to under paragraph (4) of the preceding Article, within eight days from the last service of a final judicial decision on the accused or defence counsel (Article 120(4)).'

Article 11

In Article 435, in paragraph (2), the words 'senate (Article 25(6))' shall be replaced by the words 'the court of second instance'.

Article 12

In Article 87 of the Act Amending the Criminal Procedure Act (Official Gazette of the RS, No 68/08), in paragraph (4), the date '01.01.2010' is replaced by the date '1 January 2011'.

TRANSITIONAL AND FINAL PROVISION

Article 13

The Government of the Republic of Slovenia shall, within six months of this Act coming into force, harmonise the Decree on the cooperation of the State Prosecutor's Office of the RS and the Police in detection and investigation of perpetrators of criminal offences (Official Gazette of the RS, No 52/04) with the provisions of this Act.

Article 14

This Act shall come into force on the 15th day after it is published in the Official Gazette of the Republic of Slovenia.